

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3637 OF 2006**

1.Ram Kashiram Salvi
2.Dilip Tukaram Rane
3.Obrey John Pereira
4.Sunil Baliram Talekar
5.Dilip Ramchandra Kadvadkar
6.Vinayak Ramesh Shetye
7.Ravindra Anant Ghag
8.Prasad Manohar Desai
9.Prabhakar Anand Salunkhe

...Applicants

vs.

1.The State of Maharashtra
2.The Bureau of Civil Aviation Security
3.Suresh Vithu Patil

...Respondents

Mr.M.M.Chopra for the Applicants
Mr.S.V.More, A.P.P. for State
Mr.Rajesh Jadhav for Respondent No.3.

CORAM: A.S.OKA, J.

DATE OF HEARING OF LAST ARGUMENTS: DECEMBER 22, 2006.

DATE OF PRONOUNCEMENT OF JUDGMENT: JANUARY 16, 2007.

JUDGMENT:

1. By this Application under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code), the prayer is made for quashing the proceeding of Criminal Case No.66/PW/2004 pending on the file of the learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai. The said Criminal Case is on the basis of the F.I.R.No.300 dated 10th August 2003 lodged by the third Respondent with Sahar Police Station, Mumbai alleging commission of offences under sections 141,142, 143, 144, 146, 147, 148, 149, 326 323, 324 and 427 of the Indian Penal Code against the Applicants and others.

2. In the F.I.R. the first Respondent has alleged that he is an employee of M/s.Cambata Aviation Pvt.Ltd. and he has been working as a loader. He stated that in the said company there was a union of Bhartiya Kamgar Sena under the leadership of Mr.Suryakant Mahadik and Mr.Kiran Bawkar. According to him the workmen were not happy with the functioning of the said union and therefore, he along with his colleagues were trying to bring another union viz. Rastriya Majdoor Sangh in M/s.Cambata Aviation Pvt.Ltd. However, this was not liked by some workmen of M/s.Cambata Aviation Pvt.Ltd.

3. According to the third Respondent, on 9th August 2003 a meeting was held in presence of he himself, Sharad Sawant, Suresh Patil, Ganesh Parab, Deepak Kandalgaonkar, Ganesh Palande at 3.00 p.m. as regards bringing the Rashtriya Majdoor Sangh as a union in Cambata Aviation Pvt.Ltd. After completing the discussion at about 22.45, the said persons left the office of M/s.Cambata Aviation Pvt.Ltd. There is a ground in front of the office. At that time, the Applicant and others came towards the first informant and his colleagues. It is alleged that the Applicant No.2 started assaulting Sharad Sawant. The Applicant No.1 by an iron rod assaulted the third Respondent on his left hand. The Applicant No.6 assaulted one Dilip Kandalgaonkar by giving the fist blow on his eye. The said Dilip gave a fist and kick blow to one Ganesh Palande. Applicant Nos.7 and 8 assaulted

one Ganesh Parab. Applicant Nos.3 and 4 thereafter assaulted Sharad Sawant by giving him fists and kick blows. The Applicant No.2 assaulted Sharad Sawant on his head by using an article and blood came out of the injury sustained by the said Sharad. According to the third Respondent, they ran away from that place for saving their lives and reached the Sahar Police Station.

4. Before the trial Court the third Respondent, Sharad Sawant, Deepak Kandalgaonkar, Ganesh Parab and Ganesh Palande filed an Application dated 17th August 2006 stating therein that they have settled their differences with the Applicants and they are now on very cordial terms with the Applicants. It was stated in the Application that the entry passes of the Applicants were not being renewed by the second Respondent as a result of the said criminal case. It was submitted in the said Application that the said persons may be allowed to compound or settle the matter in the interest of the justice. In the said Application, it is stated that as a result of disputes between the various groups of the workers working with M/s.Cambata Aviation Ltd., the name of the Applicants were written as accused. They stated that the Applicants were not involved in the offence.

5. The prayer in this Application is for quashing the case in view of the settlement between the parties. The Applicants have placed reliance on the Affidavit dated 18th October 2006

filed by the third Respondent, Sharad Sawant, Deepak Kandalgaonkar, Ganesh Parab and Ganesh Palande in which they categorically stated that they have settled the differences with the Applicants and therefore, they may be permitted to withdraw the case against the Applicants.

6. The learned Counsel for the Applicants has placed reliance on various decisions of the Apex Court, this Court and other High Courts. The learned A.P.P. submitted that the offences registered against the Applicants are not compoundable offences. He submitted that in effect the prayer in this Application is for allowing compounding of the offences. He placed reliance on the decision of the Apex Court in case of Bankat and another Vs. State of Maharashtra [(2005) 1 S.C.C. page 343] and Mahesh Chand and another Vs. State of Rajasthan [1991 S.C.C. (Cri.) page 150]. He submitted that power under section 482 of the said Code cannot be exercised for quashing the case where the offences alleged are not compoundable. He, therefore, submitted that the Application deserves to be rejected considering the gravity of allegations made in the F.I.R.

7. I have considered the submissions. I have also perused the F.I.R. and the Affidavit filed by the third Respondent and others on 18th October 2006 in this Court. The Affidavit has been filed by the third Respondent (first informant) and all others who were allegedly injured in the incident.

Paragraphs 5 to 8 of the said Affidavit read thus :

- "5) We say and submit that we all have settled all our differences within the Trade Union's different factions and further also now have realized that the Applicants herein were not involved in the said assault on us on the said date of incident.
- 6) We say and submit that otherwise also we all have settled and sorted all our differences since long time and we all, along with the Applicants herein are on very cordial and talking terms and thus there remains nothing between us to go on with the trial of the above case in the light of the above facts.
- 7) We further say, submit and confirm that vide joint-application dated 17-8-2006, labelled as 'Application for permission to compound/settle/withdraw the case', we all and the present Applicants herein, had executed, affirmed, filed and prayed before the Hon'ble trial Court of Metropolitan Magistrate's 22nd Court at Andheri, Mumbai to allow us to compound/settle the matter and consequently to allow the Applicants herein to get their 'Airport Entry Passes' issued by the Respondent No.2. Which Application came to be rejected by the Learned Magistrate vide His Order

dated 14-9-2006; which is reflected at Exhibit 'F' of the present Application. We confirm having signed the same along with all the respective signatories as are detailed therein, who only are concerned parties in the matter.

- 8) Under the circumstances, we most humbly pray to this Hon'ble Court to allow us to either compound/settle with or withdraw against the above Applicants the said case in the interests of justice, cordiality within the Society and Workplace, peaceful co-existence and equity and consequentially the present Petition may kindly be allowed."

8. It is obvious that there was a union rivalry between the Applicants and the third Respondent and his colleagues and the alleged fight was as a result of the said rivalry. It is true that the offences alleged against the Applicants cannot be compounded as the same are not made compoundable. The learned A.P.P. is right in relying on the decisions of the Apex Court in case of Bankat and another (supra) and Maheshchand and another (supra) which hold that the offence which is not compoundable cannot be allowed to be compounded. However, the prayer in this Application is not for allowing the offences to be compounded but the prayer is for quashing the case by invoking power under section 482 of the said Code. It will be

necessary to refer to the decision of the Apex Court in case of Madhavrao Jiwaji Rao Scindia and another Vs. Sambhajirao Chandrojirao Angre and others (1988 Cr.L.J. page 853). In paragraph 7 of the said decision, the Apex Court has held thus:

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis of that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

(Emphasis supplied)

In another decision of the Apex Court in case of B.S.Joshi and others vs. State of Haryana and another [(2003) 4 S.C.C. page 675, the Apex Court had an occasion to consider the scope of power under section 482 of the said Code. In paragraph 8 of the said decision the Apex Court has held thus :

"8. It is, thus, clear that Madhu Limaye case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Section 482 of the Code of extraordinary power under Article 226 of the Constitution of India. **We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power.**"

(Emphasis supplied)

In paragraph 15 of the said decision, the Apex Court held as under :

"15. **In view of the above discussion, we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code.**"

(Emphasis supplied)

In view of the law laid down by the Apex Court in the aforesaid decisions, the submission made by the learned A.P.P. cannot be accepted. Even in a case where the offence complained of is non-compoundable, this court can exercise power under section 482 of the said Code for quashing the case.

9. In the present case, apart from the first informant all the persons who were allegedly injured in the incident have filed an Affidavit which is referred to above. The third Respondent and injured persons have in so many terms stated that the Act of filing F.I.R. was the outcome of the union rivalry between the two groups. If the said Affidavit is considered, it is obvious that the chances of ultimate conviction are very bleak.

10. Considering the peculiar facts of the case as reflected from the aforesaid Affidavit it is obvious that no useful purpose is likely to be served by allowing the criminal prosecution to continue. This is one of those exceptional case where power under section 482 of the said Code will have to be exercised in a case which is at preliminary stage. Hence, Application must succeed in so far as prayer (a) is concerned. The prayer (b) cannot be granted in this Application under section 482 of the said Code. The

Applicants are at liberty to adopt appropriate proceeding in that behalf.

11. Hence, I pass the following order :

- . Criminal Case No.66/P.W/2003 pending on the file of the learned Metropolitan Magistrate, 22nd Court, Andheri, Mumbai is quashed.

JUDGE